United Nations

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 754

Case No. 842: GEADAH

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Hubert Thierry, Vice-President; Mr. Mikuin Leliel Balanda;

Whereas, at the request of Subhi Iskandar Geadah, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP), the President of the Tribunal, with the agreement of the Respondent, extended to 30 November 1994 the time limit for the filing of an application to the Tribunal;

Whereas, on 30 November 1994, the Applicant filed an application which did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 28 February 1995, the Applicant, after making the necessary corrections, again filed an application in which he requested the Tribunal to grant him:

> "... correction of his gross salary effective the date of his promotion in 1987 to be at a level and step higher than his previous gross salary before promotion. His gross salary at FSL/7 in 1987 was equivalent to that of P.4/VII gross salary and not the P.3/XIII he received; ...
>
> A. [and to pay him compensation equivalent to] $136,515

...

B. ... damage resulting from placement for three and [a] half years on unjustified leave [equivalent to] $91,875

(e) ... compensation for pain of mind; for damage caused to his standing in his professional field; damage and continued pressures placed on his mental and physical health; for other mental and physical trauma caused and continued without relief [equivalent to] $122,000."

Whereas the Respondent filed his answer on 13 April 1995;

Whereas the Applicant filed written observations on 26 June 1995;

Whereas the facts in the case are as follows:

The Applicant was locally recruited by the United Nations Relief and Works Agency for Palestine Refugees in the Near East in Lebanon in 1957. In 1960, he was seconded to the United Nations Operation in the Congo as Assistant Cashier at the FSL-3 level. In 1965, he was transferred to UNDP, where he served as Finance Clerk in Rwanda at the FSL-4 level until 1967. He was subsequently assigned to other posts, including Morocco, Mauritius, Syria, Bahrain, Ankara and Abu Dhabi. Finally, on 3 January 1984, he was reassigned to Madagascar and, on 1 January 1987, promoted to the P-3 level.

From 17 November 1987 to 12 May 1988, he was seconded to UNDP in Senegal. Effective 18 January 1989, he was transferred to the Gambia. From 26 May 1989 to 19 November 1992, the Applicant was placed on special leave with full pay. On 20 November 1992, he was temporarily assigned to UNDP headquarters, where he remained until 19 February 1993, the date of his retirement.

In a letter dated 21 June 1984, the Officer-in-Charge of the Division of Personnel informed the Applicant, who at the time was posted to Madagascar, that "... we are in the process of identifying an alternative assignment more in line with your family needs". On 18 July 1984, the Division of Personnel informed the Applicant that there were no suitable

vacant posts in New York or Washington and that, for the time being, there were no other possible duty stations.

In August 1984, two physicians recommended that the Applicant should be transferred to another duty station for medical reasons. On 24 September 1984, the Division of Personnel informed the Applicant by cable that, although Madagascar was usually a four-year duty station, "for medical and compassionate grounds, we are prepared to consider your move now". The cable took note of the fact that the Applicant was interested in an assignment restricted to New York or Canada, and stated that there was no UNDP office in Canada and no post available at Headquarters.

In an audit report dated 4 May 1987, it was noted that the Applicant had been assigned to Madagascar at the beginning of 1984, that he had fallen ill several months after his arrival and had been replaced in his duties and that "three years after his arrival, and while there have already been three successors filling his post of Administrative Officer, [the Applicant], who remains assigned to the Madagascar office, is still not carrying out any duties there and does not even figure in the organizational chart provided to the auditors". It was further noted in the report that "the Division of Personnel, although apprised of the matter on several occasions by the office ..., has not seen fit to transfer the person in question to an office more suited to his abilities and background", and that "the concern not to perpetuate a situation felt to be temporary has led to a situation in which the person in question has not been assigned any real work".

In reply to a request for information from the United Nations Board of Auditors regarding these observations, the Resident Representative in Madagascar stated that the situation of the Applicant "is a source of constant frustration for the Resident Representative who, since his arrival two years ago, has been trying to convince Headquarters to reassign the officer in question".

On 11 March 1987, the Applicant again requested that he be transferred to New York in order to provide his children with better educational opportunities and to avail himself of

medical assistance. In a reply dated 2 July 1987, the Associate Administrator noted that, during the 1987 promotion review, the Applicant had been promoted to the P-3 level, an action which, he pointed out, "has partly been taken to facilitate your reassignment to UNDP or Agency Headquarters if and when a suitable post would come up". He added that such a post was currently not available but that "the Division of Personnel continues to identify each opportunity".

In November 1987, the Applicant was seconded to Senegal and, on 18 January 1989, he was assigned to the Gambia. On 22 May 1989, the Director of the United Nations Medical Service authorized the evacuation, under medical supervision, of the Applicant to France and granted him sick leave with a daily subsistence allowance until 25 July 1989. In a telex dated 8 August 1989, the Applicant was informed of the recommendation of the Director of the United Nations Medical Service that "you should not return [to the] Gambia due [to] your health condition". On 26 May 1989, the Applicant was placed on special leave with full pay until 31 December 1989 "pending identification of a new duty station". This special leave was extended twice, until the end of 1992.

On 14 December 1990, the Director of the United Nations Medical Service informed the Division of Personnel of UNDP that the Applicant "should only be assigned to Headquarters".

In reply to the Applicant's request for information, on 14 August 1992, the Division of Personnel confirmed that his retirement date was 10 January 1993, and inquired whether he would be interested in a short temporary assignment to the Finance Section of the Office for Project Services (OPS) in New York until his retirement. The telex stated that "if this is not of interest to you we will continue your status on [special leave with full pay] until separation".

On 22 August 1992, the Applicant accepted the offer to work at OPS/New York.

On 20 November 1992, the Applicant began his temporary assignment at UNDP headquarters. At the same time, his special leave with full pay was retroactively approved for the period from 1 January 1991 to 19 November 1992. On 19 February 1993, the Applicant

retired.

On 12 March 1993, the Applicant requested the Secretary-General to redress the failure of UNDP to find him an acceptable post that would have enabled him to improve his professional skills and carry out duties that would have advanced his career. The Applicant further requested that his promotion in 1987 to the Professional category be reviewed, since the promotion had resulted in a reduction of his salary and of the allowances he had been receiving.

On 26 March 1993, the Applicant filed an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 3 May 1994. Its considerations and conclusions are as follows:

"*Considerations*

6. The Panel agreed with [the] Respondent that if each of the decisions objected to by [the] Appellant was considered in isolation, the appeal would be time-barred. It felt, however, that if there were a pattern of discrimination or mistreatment over a period of years as alleged by [the] Appellant, the appeal would be receivable. It reviewed the files to see whether there was evidence of such a pattern.

7. The Panel found reason to understand and sympathize with [the] Appellant's feelings of frustration, but it found no evidence of any discriminatory action by UNDP. On the contrary, it did find evidence of attempts - albeit, ineffective and tardy - to help [the] Appellant find a posting in North America.

Conclusion

8. The Panel concluded, therefore, that the appeal was not receivable."

On 11 May 1994, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed him that the Secretary-General "has taken note of the Board's conclusion that your appeal was not receivable, and accordingly, has decided to take no further action in respect of your case".

On 28 February 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant is filing an appeal against a series of decisions each of which had new consequences at a later date, so that he was the target of systematic and continuing discrimination.

2. The Respondent had no legitimate reason to assign the Applicant to duty stations where his health was likely to deteriorate and to keep him in a state of uncertainty for a long time, which prevented him from pursuing his career in the normal manner.

Whereas the Respondent's principal contentions are:

1. The appeal was time-barred and the JAB properly exercised its discretionary power in not recommending that the time limit be waived.

2. There is no credible evidence that the decisions against which the appeal was filed were biased or were taken for some other unjustified reason.

The Tribunal, having deliberated from 11 to 16 July 1996, now pronounces the following judgement:

I. The present case reveals the poor management by UNDP of one of its staff members. It appears that, for ten years, that is, from his assignment to Madagascar in 1984, as Administrative Officer, until his retirement in February 1993, the Applicant performed virtually no activity of any use to the Organization of which he was a relatively high-ranking member. Indeed, he had barely commenced his duties in Madagascar in January 1984 when a replacement was appointed to his post, and was followed by several others. As a result, the Applicant, who suffered from poor health, was not assigned any specific duty for the entire

duration of his mission to Madagascar, which lasted until 1988. This situation gave rise to observations by the auditors assigned by the United Nations Board of Auditors in 1987 to inspect the Antananarivo office to which the Applicant was in principle attached, although these observations did not elicit much of a response from the UNDP authorities.

Assigned to the Gambia in 1989, the Applicant did go but had to be medically evacuated four months later to the south of France, where he remained until 1992 on special leave with pay. At that time (November 1992), shortly before his retirement, the Applicant was assigned to UNDP headquarters in New York, where he worked for three months, until 19 February 1993, the effective date of his retirement and his return to the Côte d'Azur.

II. The Applicant believes that his inactivity during this whole period was harmful to him. He considers the reason for such inactivity to be discrimination towards him which deprived him of an appointment to UNDP headquarters in New York, in accordance with his wishes and abilities. He claims that such discrimination was the result of a deliberate policy on the part of the UNDP Administration to keep him out of the way.

III. The review of the facts as reported by the Applicant himself reveals that there is nothing to corroborate his allegations or justify his claims. His inactivity during his stay in Madagascar was due to poor health and the fact that he was constantly waiting for another assignment or, to be exact, his assignment to New York, in his view the only acceptable duty station but where, however, there was no post available for him. Moreover, it was at his request that his brief mission to the Gambia was terminated.

During this time, the Applicant received a promotion. From a Field Service Level-7 post he was promoted in 1987 to the P-3 level, which in principle should have facilitated his assignment to New York and, at the very least, demonstrated the Administration's goodwill towards him.

IV. The Applicant contests the decisions which UNDP successively adopted concerning him: his assignment to Madagascar, his assignment to the Gambia and the special leave with pay which he received from 1989 to 1992. He claims compensation for damages caused to him, namely "for pain of mind; for damage caused to his standing in his professional field; damage and continued pressures placed on his mental and physical health; for other mental and physical trauma caused and continued without relief". The Applicant also requests compensation for the loss caused to him by his promotion in 1987 to the P-3 level, which resulted in total remuneration less than what he had received at his previous FSL-7 post.

V. The JAB deemed that, if each of the decisions objected to by the Appellant was considered in isolation, his appeal would be time-barred but would have been receivable if he had been, as he alleges, the target of deliberate discrimination during the years of his service in UNDP. The Board totally rejected the latter assumption and, in the light of the facts set out above, the Tribunal shares the Board's conclusion on the subject.

VI. For these reasons, the Tribunal rejects the appeal.

(Signatures)

Samar SEN
President

Hubert THIERRY
Vice-President

Mikuin Leliel BALANDA
Member

Geneva, 16 July 1996

R. Maria VICIEN-MILBURN
Executive Secretary